



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Servrite International, Ltd.

File: B-237122

Date: January 4, 1990

DIGEST

Protester has no basis to object to the agency decision to hold discussions and request best and final offers where firm is not low if discussions were not held, and discussions effectively provide a new opportunity for firm to compete for award.

DECISION

Servrite International, Ltd. protests the award of a contract to Contact International Corporation (CIC) under request for proposals (RFP) No. F62562-89-R0130, issued by the Department of the Air Force for operating a dairy plant. Servrite initially argued that it was the low offeror under the evaluation scheme and that, in any event, CIC is nonresponsible and therefore ineligible for award.

We deny the protest.

Servrite and CIC submitted offers. The agency reports that Servrite was the apparent low offeror based on initial offers. The contracting officer, however, requested "clarifications" of both offers to permit proper price evaluation. Servrite subsequently submitted a revised offer which displaced it as the low firm. The contracting officer then requested and received from Servrite verification of its revised offer, following which the Air Force awarded the contract to CIC as the low offeror in accordance with the evaluation scheme which basically called for award to the low priced offeror.

After filing an initial report, the agency subsequently advised our Office that it believes the request for "clarifications" concerning price constituted discussions. In its view, it failed to formally open discussions or

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request best and final offers (BAFOs) although it accepted a revised offer from Servrite.

It reports that it has decided to open discussions with both offerors, request BAFOs and make a new award consistent with the RFP evaluation scheme. It thus views Servrite's protest as academic.

While not disputing the agency's position on the merits as to its status as second low offeror after it submitted its revised offer, Servrite objects to the Air Force's decision to hold discussions and request a BAFO. Servrite points out that prices have been exposed and alleges that the agency's proposed action creates an auction. Servrite asserts that award on initial, unrevised offers is the appropriate remedy here.

Discussions are communications between the government and an offeror that either involve information essential for determining the acceptability of a proposal or provide an opportunity for proposal revision. Clarifications, on the other hand, are inquiries for the purpose of eliminating minor uncertainties or irregularities in a firm's proposal and do not require discussions with other offerors in the competitive range. See Federal Acquisition Regulation § 15.601 (FAC 84-28). If discussions are held with one offeror, they must be held with all offerors in the competitive range. See Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD 422.

If the Air Force is incorrect and its communication with Servrite constituted clarification, not discussions, then Servrite's offer as clarified was not low and award to CIC as the low priced firm on initial offers was proper. Alternatively, if the Air Force is correct and discussions were improperly held solely with Servrite, Servrite has no basis to complain to the Air Force since the agency could not award to Servrite on the basis of its revised offer without also providing CIC an opportunity to engage in discussions and revise its offer. Moreover, the Air Force's proposed remedy thus effectively provides Servrite a new opportunity to compete for the award.

We deny the protest.



James F. Hinchman
General Counsel